

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**AMERICAN AIRLINES, INC.,**

**Plaintiff/Petitioner,**

**v.**

**ALLIED PILOTS ASSOCIATION,**

**Defendant/Respondent.**

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**No. 4:12-cv-00083-Y**

**AMERICAN AIRLINES, INC.'S MOTION TO STRIKE THE EVIDENCE  
ALLIED PILOTS ASSOCIATION FILED WITH ITS REPLY**

TO THE HONORABLE TERRY R. MEANS, FEDERAL JUDGE:

American Airlines, Inc. (“American”) files this Motion to Strike The Evidence Allied Pilots Association Filed With its Reply and would respectfully show the Court as follows:

**I.  
INTRODUCTION**

This case is before the Court on cross-motions for summary judgment. Allied Pilots Association (the “APA”) filed an appendix containing new evidence when it filed its Reply [dkt #33]. Because this evidence was inappropriately submitted, American respectfully requests that the Court exclude the APA’s Reply Appendix.

**II.  
ARGUMENT AND AUTHORITIES**

The Northern District of Texas’s summary judgment rules allow a movant to file a reply brief, but not an appendix in support of the reply. *Dethrow v. Parkland Health*

*Hosp. Sys.*, 204 F.R.D. 102, 103 (N.D. Tex. 2001) (striking the reply appendix where the movant did not first obtain leave of court); *Dickerson v. United Parcel Service, Inc.*, No. 3:95-CV-2143-, 1999 WL 966430, at \*2 (N.D. Tex. Oct. 21, 1999) (stating that the court did not consider the impermissible supplemental appendix and citing N.D. Tex. Civ. R. 7.1(f)). This is because a reply brief exists to grant the movant an opportunity to rebut the non-movant's response—not to allow the movant to introduce new evidence. *Racetrac Petroleum, Inc. v. J.J.'s Fast Stop, Inc.*, No. 3:01-CV-1397, 2003 WL 251318, at \*19 (N.D. Tex. Feb. 3, 2003). A movant is not ordinarily permitted to introduce new evidence in support of a reply because “such action would deprive the non-movant of a meaningful opportunity to respond.” *Jackson v. Dallas County Juvenile Prob. Dept.*, No. 3:06-CV-264-M (BH), 2007 WL 2187250, at \*4 (N.D. Tex. July 30, 2007) *aff'd sub nom. Jackson v. Dallas County Juvenile Dept.*, 288 Fed. Appx. 909 (5th Cir. 2008) (citing *Springs Indus., Inc. v. American Motorists Ins.*, 137 F.R.D. 238, 239-40 (N.D. Tex. 1991)). Thus, Northern District of Texas courts grant leave to introduce reply evidence only in limited circumstances. *Racetrac Petroleum*, 2003 WL 251318, at \*19.

The APA has introduced reply evidence without first obtaining leave. *See* Appendix in Support of Allied Pilots Association's Reply at 1. This new evidence

included the OE Worksheets and additional pages of the Arbitration Transcript. The additional Arbitration transcript pages are unnecessary. American introduced the entire Arbitration transcript in its Appendix. The OE Worksheets are confusing because they are counter to the stipulated fact that Minkin could not complete the transition because of safety concerns. APA relies on the OE Worksheets to assert that American is making “slurs on Captain Minkin’s competence.” Reply at 5 n. 5 APA’s evidence is taken out of context and leaves the false impression that Minkin was a “satisfactory” flier. This tactic is the reason that reply evidence is generally not allowed under the local rules.

APA purports that Local Rules 56.5 and 56.6 authorize reply appendices. These rules instead reference an appendix in support of or opposition to a motion for summary judgment. *See* L.R. 56.5; 56.6. The APA’s untimely evidence deprives American of a meaningful opportunity to respond, and is thus improper. Accordingly, the Court should strike the Appendix in Support of Allied Pilots Association’s Reply.

### **III.** **CONCLUSION**

American respectfully asks the Court to strike the evidence in support of the Allied Pilots Association’s Reply.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**AMERICAN AIRLINES, INC.**

**CERTIFICATE OF CONFERENCE**

The undersigned counsel for American conferred with counsel for the APA on August 27, 2012, but agreement could not be reached on this matter. The Motion is therefore submitted to the Court for determination.

/s/ Roger C. Diseker

Roger C. Diseker

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of August, 2012, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" via electronic mail on that date to counsel for all parties of record listed below.

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